IN THE HIGH COURT OF BOMBAY AT GOA

CRIMINAL WRIT PETITION NO. 43 OF 2004.

Mrs. Minguelin Lobo,
resident of Ashok Nagar, Kanjur,
Bhandup (E), Mumbai. ... Petitioner.

VERSUS

1. Smt. Archana Sawant,
   resident of House No. 405,
   Sim Vaddo, Arpora,
   Bardez, Goa.

2. The State of Goa,
   through the Public Prosecutor,
   Panaji, Goa. ... Respondents.

Shri N. Costa Frias, Advocate for the Petitioner.

Shri A. Kansar, Advocate for the Respondent No.1.

Ms. S. Linhares, Addl. Government Advocate for the Respondent No.2.

CORAM: N.A. BRITTO, J.

DATE: 10TH SEPTEMBER, 2004.

J U D G M E N T;

Rule. By consent of the parties, heard forthwith.

2. The petitioner has invoked the jurisdiction of this Court under Articles 226, 227 of the Constitution of India and under Section 482 of the Code of Criminal Procedure, 1973 to claim the following reliefs :-

(a) To quash the Order dated 31.1.04 passed by the learned Sessions Judge, North Goa, Panaji; and

(b) To send the records and proceedings in Cri. Misc. Application No.117/03/B to the Court of Chief Metropolitan Magistrate, Esplanade, Mumbai to be dealt with in accordance with law.

3. Some facts are required to be stated to dispose of the present petition.

The petitioner as well as the respondent No.1 are residents of Mumbai. The petitioner claims that she had invested a sum of Rs.2.4 lacs with the respondent No.1 between 1996 to 1999 and that apart, the petitioner also claims that she had advanced loans to the tune of Rs.8.8 lacs to respondent No.1. It is the case of the petitioner that the said investment was made because the respondent No.1 along with her husband had started some chit fund scheme with the promise to pay higher rates of interest and when the said scheme matured in the year 2001 the petitioner and others like her went to respondent No.1 to ask as to when they would be receiving their money, but thereafter, she kept on avoiding them. The

petitioner stated that she went to the residence of respondent No.1 on 12.8.01 on which occasion the petitioner was threatened, abused and badly beaten up by respondent No.1 and her husband who, subsequently expired in 2002. The petitioner claimed that she filed a criminal complaint on 11.11.01 at Kanjur, Mumbai Police Station and by the time the investigation commenced the respondent No.1 disappeared from her residence at Bhandup (East Mumbai) and was not traceable and thereafter she filed a complaint with the Deputy Commissioner of Police, Economic Offences Cell, CID, Crime Branch, Mumbai on 25.7.02. The said complaint dated 25.7.02 alleged that respondent No.1 had cheated the petitioner to the tune of Rs.19,55,000/-.

The petitioner claims that in the first week of July, 2003 she came across a news items of "Tarun Bharat" dated 9.6.03 reporting that Respondent No.1 was found at Sanquelim, Goa and was brought to Sawantwadi Police Station by some other persons who were also cheated and it was stated that Respondent No.1 was earlier residing at Tamboulim, Sawantwadi Taluka. The petitioner stated that the respondent No.1 at Sawantwadi Police Station agreed to repay the amount taken by

her from the said persons and furnished some security and amongst the names of the persons mentioned, was the name of the petitioner. The petitioner claims that she went to Sawantwadi, but there she was informed that respondent No.1 had left for Goa and after making inquiries, the petitioner came to know that respondent No.1 was residing at Sim vaddo, Arpora, Goa and therefore the petitioner filed a police complaint on 27.9.2003 with the Anjuna Police Station and the petitioner was directed to get the proper address of respondent No.1 which the petitioner obtained on 7.10.03 and the same was communicated to Anjuna Police Station on 8.10.03, but no action was taken on her complaint.

The petitioner claims that thereafter she filed an application under S.187 of Cr.P.C. 1973 (Code, for short) which was numbered as Criminal Misc. Application No.117/03/B praying that the Anjuna Police Station be directed to produce the respondent No.1 before the Hon'ble Court and that thereafter respondent No.1 be compelled to appear before the Court of Metropolitan Magistrate at Mumbai having jurisdiction to try the offences committed by her.

The petitioner claims that the learned J.M.F.C., Mapusa conducted an inquiry and recorded the deposition of the petitioner and one Shamsunder Naik, Head Constable of Anjuna Police Station as well as of P.S.I. Rajesh Kumar.

The petitioner claims that on 29.11.2003 the learned J.M.F.C., Mapusa was pleased to issue a non-bailable warrant against respondent No.1 through the Calangute and Anjuna Police Stations. The petitioner states that accordingly respondent No.1 was arrested by the Anjuna Police Station and produced before the learned J.M.F.C., Mapusa on 20.12.03 where respondent No.1 applied for bail and respondent No.1 was released on bail upon execution of a bond of Rs.10,000/- with one surety in the like amount to appear before the Court of Chief Metropolitan Magistrate, Esplanade, Mumbai on 10.2.04 at 10 a.m. The petitioner claims that the petitioner as well as respondent No.1 remained present on 10.2.04 before the Court of Chief Metropolitan Magistrate, Esplanade, Mumbai, but it was found that the matter was not figuring on the board and she was further informed that the concerned file could not be found and she was asked to come back later.

The petitioner claims that she went again to the said Court, but was informed that she would receive summons as soon as the records and proceedings were received from Goa.The petitioner claims that on further inquiry she came to know that the file which was sent by the learned e J.M.F.C., Mapusa, to the Court of Sessions at Panaji to be sent to the Chief Metropolitan Magistrate, Esplanade, Mumbai was not sent by the learned Sessions Judge, Panaji who passed the order as follows :-

" There is no provision by which this Court can forward the records and proceedings to any Court outside the jurisdiction of this Court by virtue of Section 187 Cr.P.C. Inform the J.M.F.C., Mapusa accordingly. The R. & P. shall be returned to the J.M.F.C., Mapusa to deal with the matter as per law. "

Therefore the petitioner has filed this petition.

4. The controversy centres around section 187 of the Code which reads as follows :-

" Power to issue summons or warrant for

offence committed beyond local jurisdiction. -

(1) When a Magistrate of the first class sees reason to believe that any person within his local jurisdiction has committed outside such jurisdiction (whether within or outside India) an offence which cannot, under the provisions of Sections 177 to 185 (both inclusive), or any other law for the time being in force, be inquired into or tried within such jurisdiction but is under some law for the time being in force triable in India, such Magistrate may inquire into the offence as if it had been committed within such local jurisdiction and compel such person in the manner hereinbefore provided to appear before him, and send such person to the Magistrate having jurisdiction to inquire into or try such offence, or, if such offence is not punishable with death or imprisonment for life and such person is ready and willing to give bail to the satisfaction of the Magistrate acting under this section, take a bond with or without sureties for his appearance before the Magistrate having such jurisdiction." (emphasis supplied)

5. Shri N. Costa Frias, the learned counsel of the petitioner, has submitted that the

respondent No.1 submitted to the jurisdiction of the learned J.M.F.C., Mapusa, and thereafter did not challenge the proceedings before the learned J.M.F.C. and therefore it is not open to her to say that the Order is illegal. Shri Costa Frias next submits that the learned Sessions Judge could not have made any order not to forward the said file without hearing the petitioner.

6. On the other hand, Ms. Linhares, the learned Addl. Government Advocate has submitted that S.187 of the Code gives no power to the Magistrate to send the records and proceedings. It is her submission that the Order of the learned Sessions Judge dated 31.1.2004 could be set aside and the matter be remanded to the learned Sessions Judge to decide the same afresh after hearing both the parties.

7. Shri Amrut Kansar, the learned counsel of the respondent No.1 has submitted that the Order of the learned J.M.F.C., Mapusa is void and without jurisdiction since it was made without taking cognizance of the offence. Shri Kansar has submitted that no useful purpose would be served by remanding the proceedings to the learned Sessions Judge, Panaji, to decide afresh, after giving

notice to the parties.

8. Shri Costa Frias, the learned counsel has referred to the case of **Bhimappa Bassappa Bhu Sannavar v. Laxman Shivarayappa Samagouda and others (A.I.R. 1970 S.C. 1153),** wherein the Hon'ble Supreme Court has defined the expression 'complaint' appearing in the Code of 1898 and has stated that the word 'complaint' has a wide meaning since it includes even an oral allegation. The Hon'ble Supreme Court further observed that it may be assumed that no form is prescribed which the complaint must take. It may only be said that there must be an allegation which prima facie discloses the commission of an offence with the necessary facts for the Magistrate to take action.

9. Shri Costa Frias has also placed reliance on the case of **Trisuns Chemical Industry v. Rajesh Agarwal and others (A.I.R. 1999 S.C. 3499),** wherein the Supreme Court has stated that it is an erroneous view that the Magistrate taking cognizance of an offence must necessarily have territorial jurisdiction to try the case as well. The Supreme Court has further stated that Chapter XIII of the Code relates to jurisdiction of the criminal Courts "in enquiries and trials". That

chapter contains provisions regarding the place where the enquiry and trial are to take place. S.177 says that "every offence shall ordinarily be inquired into and tried by a Court within whose local jurisdiction it was committed." But S.179 says that when an act is an offence by reason of anything which has been done and of a consequence which has ensued, the place of enquiry and trial can as well be in a Court "within whose local jurisdiction such thing has been done or such consequence has ensued". It cannot be overlooked that the said provisions do not trammel the powers of any Court to take cognizance of the offence. Power of the Court to take cognizance of the offence is laid in S.190 of the Code.

10. Shri Costa Frias has also placed reliance on a decision of this Court in the case of **In re Sagarmal Khemraj and another (A.I.R. 1940 Bombay 397).** In this case the Division Bench of this Court observed :-

" The power of directing the arrest of some person at a place outside the local limits of the jurisdiction of a Court, particularly when that place is far removed from the local limits, is one which should be exercised with the utmost

circumspection and must be based on substantial reasons. "

The Court further observed that the person arrested outside the local limits of the jurisdiction of the Court issuing the warrant has to be taken before a Magistrate or Commissioner or District Superintendent of Police an such Magistrate or or Commissioner or District Superintendent has to satisfy himself that the person arrested appears to be the person intended by the Court which issued the warrant, and when so satisfied he is bound to direct the removal of the arrested person in custody of the Court which issued the warrant. The Court further observed that the learned Magistrate was not entitled to institute an inquiry under S.186, Criminal P.C. That section deals with the case of a Magistrate seeing reason to believe that any person within the local limits of his jurisdiction has committed an offence without such limits, and in that case he can send the person to the Magistrate having jurisdiction to inquire into the offence. But that section is dealing with a case in which the Court which has jurisdiction, has not taken cognizance of the matter, and the offence is brought to the notice of a Magistrate who is not competent to try

it, in which case he may send it to a Magistrate who is competent. The Court further held that section does not override the provisions of Ss.75 to 86 (old) which deals with the execution of warrants of arrest and the only point which the Magistrate was entitled to enquire into, was the question whether the arrested persons were those whose arrests were intended by the Chief Presidency Magistrate of Calcutta.

11. The learned Sessions Judge ought to have certainly given an opportunity to the petitioner before passing the impugned Order dated 31.1.2004. However, remanding the case to the learned Sessions Judge will not bring an end to the controversy. Principles of natural justice certainly require that the Petitioner ought to have been heard in the matter by the learned Sessions Judge before he ordered the R. & P. to be returned to the learned J.M.F.C., irrespective of whether the learned Sessions Judge was acting judicially or administratively.

12. Admittedly the petitioner had not filed any complaint before the Chief Metropolitan Magistrate at Esplanade or for that matter before any of the Metropolitan Magistrates exercising their

jurisdiction in the city of Mumbai where the offences were allegedly committed by the respondent No.1. Although the petitioner had filed a complaint before the Police authorities in Mumbai as well as in Goa, the police authorities do not appear to have registered any offence against respondent No.1. The only admitted position is that at the relevant time when the petitioner approached the Court of the learned J.M.F.C., Mapusa, under S.187 of the Code, the respondent No.1 was found within the jurisdiction of that Court. The Petitioner had also not filed a complaint before the learned J.M.F.C., Mapusa. The application dated 9.10.2003 was also not intended to be a complaint.

13. S.187 appears in Chapter XIII of the Code which deals with the jurisdiction of the criminal Courts in inquiries and trials and S.177 of the Code which is the first section in the said Chapter provides that every offence shall ordinarily be inquired into and tried by a Court within whose local jurisdiction it was committed. The question of inquiry and trial in the scheme of the Code can come only after a complaint is made, and cognizance of an offence is taken by a Court. Section 190 of the Code deals with what are known as four methods

of taking cognizance of offences by the courts competent to try the same. The learned J.M.F.C., Mapusa did record a statement of the petitioner on 23.10.03, but the same was not recorded with a view to take cognizance of any offence against respondent No.1. The other statements of the Head Constable and P.S.I. were restricted to finding out the presence of respondent No.1 within the jurisdiction of the learned J.M.F.C.

14. When can a Magistrate see reason to believe that a person has committed an offence as contemplated under S.187 of the Code ?

15. This Court in the case of Sagarmal (supra) was not dealing with Section 187 of the Code (S.186 of the old Code). It was dealing with Sections 70 to 81 (Ss.75 to 86, old Code). Therefore the observations of the Court in the said case are of no assistance.

16. Section 187 of the Code if truncated in some of its component parts will show that before a Magistrate can compel a person to appear before him and then send him to a Magistrate having jurisdiction, he has to satisfy himself that the person has committed the offence. The words used

are "he sees reason to believe that the person has committed the offence" and proceed to inquire into that offence. It is for this reason that the Apex Court in the case of **Trisuns Chemical Industry** (supra) has stated that it is an erroneous view that the Magistrate taking cognizance of an offence must have territorial jurisdiction. In my opinion, the Magistrate will get jurisdiction to compel the person to appear before him only after cognizance of the offence is taken and a prima facie finding is recorded that such a person has committed the offence. This was certainly not done by the learned Magistrate and therefore it must be held that the proceedings of compelling the attendance of Respondent No.1 before him were void and without jurisdiction.

17. The next question for consideration is regarding the proper order to be passed in the case.

18. It is nobody's case now that Respondent No.1 is still residing within the jurisdiction of J.M.F.C., Mapusa. The Petitioner always had and has a remedy of filing a complaint against Respondent No.1 at Mumbai where the offences alleged were committed by Respondent No.1.

Therefore, no useful purpose will be served either by remanding the case to the learned Sessions Judge, Panaji or the learned J.M.F.C., Mapusa, and to the latter with directions to follow the provisions of Section 187 of the Code in their letter and spirit. It does not stand to reason at all that a person can be arrested and that too, outside the jurisdiction on a wild allegation of another person that such person has committed an offence, unless a prima facie judicial finding is recorded that such a person has committed the offence.

19. In view of the above, I find there is no merit in this petition and the same is hereby dismissed. Rule discharged.

N. A. BRITTO, J.

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